

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In Re: JPMORGAN CHASE  
MORTGAGE MODIFICATION LITIGATION No. 11-md-02290-RGS  
Related cases:

11-cv-11804-RGS

11-cv-11812-RGS

11-cv-11817-RGS

11-cv-11818-RGS

11-cv-11830-RGS

11-cv-11831-RGS

11-cv-11838-RGS

11-cv-11839-RGS

11-cv-11840-RGS

11-cv-11841-RGS

11-cv-10380-RGS

BEFORE THE HONORABLE RICHARD G. STEARNS  
UNITED STATES DISTRICT JUDGE  
MOTION FOR PRELIMINARY APPROVAL  
December 5, 2013

Courtroom No. 21  
1 Courthouse Way  
Boston, Massachusetts 02210

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## P R O C E E D I N G S

THE CLERK: All rise for this Honorable Court.

Court is open. Please be seated.

The case before the Court carries Case No. 11-md-2290,  
In Re: JPMorgan Chase Mortgage Modification Litigation.

Counsel, please identify yourselves for the record.

MR. KLEIN: Gary Klein, your Honor, Klein,  
Kavanagh & Costello, for the plaintiffs.

MR. SCHAFFER: Charles Schaffer, your Honor, Levin,  
Fishbein, Sedran & Berman, for the plaintiffs.

MS. CAPPPIO: Gretchen Cappio, Keller Rohrback, for  
the plaintiffs.

MR. FLANNERY: Good afternoon, your Honor. Michael  
Flannery, with Cunio, Gilbert & LaDuca, on behalf of the  
plaintiffs.

MR. AGOGLIA: Your Honor, Michael Agoglia, with  
Morrison & Foerster, along with Matthew Kane, for defendant,  
Chase.

THE COURT: Let me say at the outset, this does  
seem like quite an achievement. I do understand it occurs  
in the context of a broader effort by defendant to place  
some of the -- or most, if not all, of the mortgage issues  
behind it; but, nonetheless, this is obviously a settlement  
that will stand or fall, which I doubt it will, on its own.

I have received a motion from an Attorney Leonard

1 Bennett, who I think is probably a name known to you, just  
2 judging by the contents of the motion itself. It is a  
3 motion to continue the preliminary approval hearing to  
4 permit -- I think what he is asking for is an opportunity to  
5 discuss, most likely with you, Mr. Klein, the proposed  
6 settlement in the case.

7 I have denied the motion. I think perhaps Mr. Bennett  
8 misunderstands the purpose of the hearing today, which is  
9 not, in fact, to approve the settlement, but to give the  
10 Court an opportunity to understand the terms of the  
11 settlement as it has been reached.

12 Obviously, I have read the papers. I do think I  
13 understand it, but I have tried to assure -- I only received  
14 this motion 15 minutes ago, but have already entered an  
15 order explaining that there will be sufficient opportunity  
16 for everyone who wishes to be heard on the ultimate approval  
17 of the settlement to be heard. But I did not see any reason  
18 to postpone what is, in effect, more an informational  
19 opportunity for the Court today.

20 So, Mr. Klein, I think it would be appropriate if  
21 perhaps you proceeded with an outline of what it is that has  
22 been accomplished and is proposed that the Court endorse.

23 MR. KLEIN: Yes, your Honor.

24 Thank you for hearing us today. As you know, at least  
25 four lawyers flew in for this hearing, so we appreciate your

1 allowing it to go forward at this time.

2 Cocounsel and I are pleased to present this settlement  
3 for your review and preliminary approval. It easily meets  
4 the standards for preliminary approval, and we expect it to  
5 meet the standards for final approval as well.

6 It provides an excellent outcome, consistent with the  
7 goals of the plaintiffs and the class.

8 It is not my intention to make an extended presentation  
9 to supplement the memorandum of law that we filed, unless  
10 you have questions. However, I can note some of the key  
11 elements of this settlement just so that it is on the  
12 record, if you would like.

13 THE COURT: I think that would be most helpful, and  
14 then if I have questions with respect to any of them or any  
15 others that I have encountered that are not answered, it  
16 might be a good chance for me to ask them.

17 MR. KLEIN: Let me begin by describing, very  
18 briefly, the benefits of the settlement to the class.

19 It is, in some ways, a less-traditional settlement, in  
20 that it does not provide an opportunity for monetary relief  
21 to settlement class members, but, instead, provides for  
22 programmatic relief that is an opportunity for settlement  
23 class members to get -- to make additional applications for  
24 loan modifications and to use that process to, if possible,  
25 lower the monthly payments.

1           The settlement provides for a streamline process for  
2           class members to apply for those loan modifications, and it  
3           provides for a dedicated 800 number, trained staff to answer  
4           inquiries and to help the modifications through the process.  
5           It provides for deadlines for outcomes in the modification  
6           application process, and it provides for clarity about  
7           review processes for correcting errors in erroneous  
8           outcomes.

9           In addition, the settlement provides free housing  
10          counseling assistance from independent, nonprofit counseling  
11          organizations. Chase will pay for up to 50 hours of  
12          counseling and more in circumstances where it's necessary.

13          The counselors who will be involved in providing those  
14          services are independent nonprofits with an excellent  
15          reputation for advocacy on behalf of homeowners. The two  
16          organizations are HomeFree-USA and National Council of La  
17          Raza.

18          I want to mention on the record that no member of  
19          plaintiffs' counsel team and none of the class counsel have  
20          any financial interest in those organizations, and no money  
21          is being directed to them for any -- no class counsel will  
22          receive any benefit from money that's being directed to them  
23          for counseling.

24          The settlement provides for foreclosure holds. What  
25          that means is that when the invitation letter that describes

1 the right to apply for settlement benefits goes out, Chase  
2 will place a foreclosure hold when that letter is sent.  
3 And, to make it less complicated, because the sending of  
4 that invitation letter is going to be staged, the  
5 foreclosure hold will go into effect at the time the first  
6 of the invitation letters is sent.

7 In addition, there are additional foreclosure holds on  
8 a case-by-case basis. For those who need a hold pending the  
9 mailing of the invitation letter, the settlement provides  
10 that a class member who completes an application for loan  
11 modification relief can get a foreclosure hold in place even  
12 before the settlement is finally approved.

13 The settlement provides for fee waivers and  
14 capitalization of fees associated with the prior  
15 modification that made the settlement class member a member  
16 of the proposed class.

17 It provides for waiver of late charges, penalties,  
18 stop-payment fees, administrative processing costs, notary  
19 and recordation fees, title costs, property valuation fees  
20 and credit report fees.

21 In addition, foreclosure fees and costs, if applied to  
22 the account, will be capitalized if the loan is modified.

23 We have, in connection with the settlement, drafted a  
24 Notice, which is Exhibit D to the Settlement Agreement. It  
25 makes clear, among other things, that there are no cash

1 settlement payments, and explains what people will have a  
2 right to in connection with applications for loan  
3 modifications.

4 I think it's very important to note, your Honor, that  
5 there is a mechanism to enforce the settlement. The  
6 settlement provides that there will be an arbitration if  
7 class counsel concludes that Chase is not providing these  
8 settlement benefits in good faith.

9 I think this will prevent a situation where homeowners  
10 could be left in limbo again on their reapplications and  
11 allows us to make sure that, with careful monitoring, these  
12 settlement benefits will be made available fairly and with  
13 all of the procedural protections that were agreed to.

14 There is a release associated with this settlement  
15 which is consistent with *res judicata*. The core of the  
16 release is that claims that were or could have been raised  
17 in this action, the action before this Court, based on the  
18 transactional nucleus of operative facts, are released  
19 unless the class member opts out.

20 There is a provision for attorneys' fees and class  
21 representative payments. Those were negotiated with the  
22 assistance of a mediator after -- and I should say, all of  
23 the settlement relief was negotiated with the assistance of  
24 two nationally known mediators. The provisions for  
25 attorneys' fees and class rep payments were negotiated with



1 the assistance of a mediator after all of the relief for the  
2 class was negotiated.

3 The settlement provides for class representative  
4 service payments of \$3,500 per class representative, and it  
5 provides for an attorneys' fee payment of up to \$9.5 million  
6 if approved by the Court.

7 This, as you know, has been hard-fought, contested  
8 litigation, and that's true both before and after the  
9 multidistrict litigation was formed and cases were  
10 transferred to this Court.

11 Counsel expects to show -- and I should say class  
12 counsel expects to show that their Lodestar far exceeds  
13 9.5 million at the time of final approval. We have  
14 committed, your Honor, to put information on the basis for  
15 the fee request, including all of the papers we intend to  
16 file with the Court, on the settlement website no later than  
17 30 days after notice goes out. That would give class  
18 members an opportunity to review the basis on which class  
19 counsel asserts a right to fees.

20 You have a Preliminary Approval Order in draft that is  
21 agreed to by Chase and the plaintiffs here. That Order does  
22 a number of things. It, first of all, certifies the  
23 settlement class of between 55 and 60,000 individuals. Our  
24 papers are thorough on the certifiability of the settlement  
25 class.

1           It's not my intention to make an additional  
2 presentation about certification of the settlement class  
3 unless the Court has questions or concerns about it.

4           THE COURT: Regarding the class, it does not  
5 include anyone who is presently in bankruptcy?

6           MR. KLEIN: That's correct, your Honor.

7           THE COURT: Or anyone who has been previously  
8 foreclosed finally?

9           MR. KLEIN: That's correct, your Honor. Those  
10 individuals would not be in the class, and that means that  
11 they will not be releasing any claims in this case.

12          THE COURT: Understood.

13          MR. KLEIN: The Preliminary Approval Order  
14 obviously also preliminarily approves the settlement. It  
15 appoints class representatives and proposed class counsel.  
16 It approves the form of notice.

17          I wanted to mention just one thing on the form -- two  
18 things on the form of notice. One is that this case  
19 involves class members who are still in their homes.  
20 They're still customers of Chase. It's quite likely that  
21 the first class notice that we proposed to do will reach  
22 almost all or all of the settlement class, and, therefore,  
23 meets constitutional standards.

24          And, second, I wanted to mention that there has been a  
25 discussion between the parties about whether the Notice will

1 be a bifold or trifold Notice. There's a great deal of  
2 debate in the settlement administration community about  
3 exactly what form of notice is most likely to be opened.  
4 We're, I think, going to ask the settlement administrator to  
5 mock up the various options for notice and make a decision  
6 about what we think works best.

7 What we are asking you to do is to approve the proposal  
8 that it will be one or the other at this time.

9 Other things -- the other issue for the Preliminary  
10 Approval Order is it will set the date of the fairness  
11 hearing. The parties have agreed that that date should be  
12 no less than 130 days from the date that the Preliminary  
13 Approval Order is entered, and if the Court were going to  
14 enter the Preliminary Approval Order in the next couple of  
15 days, we would ask for a fairness hearing date on or after  
16 April 21, 2014.

17 THE COURT: Mr. Bennett's letter, should I  
18 anticipate that there are going to be counsel who will  
19 intervene?

20 MR. KLEIN: I think there's a couple of things I  
21 wanted to say about that.

22 Mr. Bennett has been a participant at some level in  
23 this litigation. He had a case that was transferred here.  
24 You remanded it, at his request at some point, and I believe  
25 he has proceeded on some of his client's claims in Virginia.

1 Perhaps Chase could speak more fully about what happened  
2 after remand in that case. He has raised some things, and I  
3 have not had a full opportunity to review his motion to  
4 continue.

5 THE COURT: I do not think there is much, and I am  
6 not inquiring about his interest in the matter. I am just  
7 thinking in terms of how much time do I need to set aside  
8 for the hearing itself.

9 MR. KLEIN: I expect he will consider whether to  
10 object on behalf of some or all of his clients. I don't  
11 know at this time whether that objection will have any meat  
12 to it or not. I don't -- I also don't know whether the  
13 people he represents are settlement class members under this  
14 class definition at this point.

15 I do think, though, that to the extent he has raised  
16 concerns, those concerns can appropriately be addressed, as  
17 I think you pointed out in your order, at the final approval  
18 hearing.

19 THE COURT: So April 21 is the earliest --

20 MR. KLEIN: And that -- we need 130 days to  
21 accommodate the process, like getting notice out, allowing  
22 people the opportunity to opt out and object, and then to  
23 get our final approval papers on file.

24 So I don't want to anticipate that you're planning to  
25 enter the order today, tomorrow, or in the next couple of

1 days; but, if you were, April 21 would be a sufficient date  
2 to accommodate all those things.

3 THE COURT: From what I understand of the  
4 settlement and from what you've told me suggests that I  
5 ought to review it sooner rather than later, because, if I  
6 understand the foreclosure hold process, that is contingent  
7 on the invitation letter being sent, and that does not go  
8 out to any potential claimant under the class until the  
9 preliminary approval is entered or --

10 MR. KLEIN: It would go after the Final Approval  
11 Order is entered.

12 THE COURT: Oh, after the Final Approval?

13 MR. KLEIN: Right.

14 And our concern on plaintiffs' side is that that happen  
15 as early as possible, but based on the agreement we've  
16 reached and the time it takes to get the class list together  
17 and notice out, as well as providing an adequate opportunity  
18 for objections and opt outs, we think the earliest that the  
19 final fairness hearing could be held is 130 days after you  
20 enter the Preliminary Approval Order.

21 THE COURT: So would the typical recipient of the  
22 letter at the moment be someone who is in default on the  
23 mortgage --

24 MR. KLEIN: Not exclusively, your Honor.

25 THE COURT: -- teetering?

1 MR. KLEIN: There may be people who cured the  
2 default after not getting approved for a permanent  
3 modification.

4 THE COURT: They would still, nonetheless, be  
5 eligible --

6 MR. KLEIN: They would still, nonetheless, be  
7 eligible as a class representative if their denial of the  
8 permanent modification was not timely. So they could have  
9 cured after the denial but still be a class member.

10 But I would say that it's likely, and I haven't seen  
11 the class list and haven't had an opportunity to do the  
12 confirmatory discovery that we expect to do on how the class  
13 list was he created, I think it's more likely than not that  
14 the majority of the class is in default.

15 THE COURT: And the class, in effect, is going to  
16 be nationwide at this point?

17 MR. KLEIN: Correct, your Honor.

18 THE COURT: Okay.

19 MR. KLEIN: Let me explain that there is an  
20 opportunity, and it's described in the Notice, for anybody  
21 who needs a foreclosure hold earlier than the invitation  
22 letter goes out, to seek that and obtain that from Chase  
23 upon completing the process of applying for a permanent  
24 modification.

25 THE COURT: How would they know this is an option

1 they have?

2 MR. KLEIN: It's in the Notice, your Honor. There  
3 is a paragraph in the Notice. I can point it out to you, if  
4 you would like.

5 THE COURT: No. I just do not recall it.

6 MR. KLEIN: There is -- we quite intentionally  
7 include a description of the opportunity to apply for an  
8 earlier foreclosure hold in the class Notice, and the  
9 settlement administrator will have a dedicated 800 number  
10 for the purpose of facilitating those case-by-case  
11 foreclosure holds.

12 THE COURT: Okay.

13 MR. KLEIN: I don't have anything else that I  
14 consider essential to present to the Court at this time.

15 Obviously, we will be in a position to address any  
16 issues or objections that come up once the Notice goes out  
17 and class members have had an opportunity to review the  
18 settlement and make a decision about how to proceed.

19 THE COURT: Can you remind me again of who the  
20 mediators were that you worked with.

21 MR. KLEIN: Judge Edward Infante, who is a former  
22 magistrate in the Northern District of California and is now  
23 at JAMS. He's provided a declaration to the Court that lays  
24 out the process by which the settlement was reached, and  
25 another mediator in his office, Cathy Yanni, who also

1 participated actively in the mediation.

2 Both of them have extensive experience resolving  
3 complicated consumer class actions and were very material in  
4 providing assistance to the parties in getting this  
5 resolved.

6 Judge Infante is a big Red Sox fan. So if you have  
7 occasion to talk to him about the settlement, you can  
8 certainly spend a good deal of time talking to him about the  
9 Red Sox.

10 THE COURT: Last issue. How did La Raza and  
11 HomeFree become --

12 MR. KLEIN: It was part of the discussions between  
13 the parties. We reviewed various options. The goal was to  
14 have at least one organization that could provide services  
15 to Spanish-speaking class members. The reason for choosing  
16 HomeFree-USA -- and that would be, in this context, the  
17 National Council of La Raza.

18 The reason for choosing HomeFree-USA is that they have  
19 a model that would allow more face-to-case counseling, so  
20 they wouldn't exclusively be counseling over the telephone.  
21 They have affiliate organizations in many communities across  
22 the country. I don't want give you the exact number, but I  
23 think it's something like 30 communities across the country.  
24 So people would have the option, if they can get into one of  
25 those offices, to have in-person counseling, rather than



1 telephone counseling.

2 I have worked in this area for many years, as you know.  
3 I have run loan modification programs even as far back as  
4 the time I worked at the National Consumer Law Center, and I  
5 am convinced that these are two of the best organizations  
6 out there for the quality of their housing counseling  
7 assistance to homeowners across the country.

8 THE COURT: By experience I have reason to rely on  
9 you and the accomplishment. I am not trying to prejudge any  
10 potential objection to the settlement, but I know, again  
11 from experience, that your work is always directed in the  
12 right places; not always with the result, perhaps, that  
13 you --

14 (Laughter.)

15 MR. KLEIN: Well, we ought not go into the cases  
16 that we lost in front of you, your Honor, but the reality is  
17 that I feel very strongly that this is a settlement that is  
18 very much tailored to the results that the plaintiffs and  
19 the class members were looking for when we commenced these  
20 cases.

21 THE COURT: Well, at least preliminarily I'm  
22 impressed with the thoughtfulness of the way the settlement  
23 is structured. No coupons, but actually some potential for  
24 valuable relief to those who were affected class members.

25 I do not want to exclude Chase from the discussion.

1 MR. AGOGLIA: Thank you, your Honor.

2 I do hope to be very brief.

3 You were absolutely right, though. This preliminary  
4 approval hearing comes in an atmosphere where Chase's  
5 efforts to put the mortgage crisis behind it are front-page  
6 news again and again. And you also know, however, that the  
7 efforts to think critically about possible resolution of  
8 this matter going back years, and is really owed, in no  
9 small part, to your opening comment in the motion to dismiss  
10 here that you thought it might be sort of viable for  
11 settlement purposes but there might be difficulties  
12 litigating to that conclusion.

13 I am very confident this stands alone as a fair,  
14 reasonable, and adequate settlement. The mediators involved  
15 are on the short list, I mean top one, two or three, of just  
16 about every significant player on both sides of the V in  
17 this case. They're nationally renowned.

18 It was a hard negotiation. Chase enlisted the  
19 resources of its senior management involved in actually  
20 implementing, executing these programs so we would have an  
21 informed view of what was achievable, practicable, and  
22 helpful, and I think that's what this reflects.

23 And even though I'm very confident that we can meet the  
24 correct standard that this needs to stand on its own, at the  
25 same time, I would say, as to even the most recent

1 Department of Justice settlement, it's absolutely  
2 complimentary that the \$13 billion much-reported settlement  
3 provides for something on the order of \$4 billion worth of  
4 consumer relief. And much of that is in the form of credits  
5 or targets that Chase has to meet by a deadline, and some of  
6 those targets were met by performing mortgage modifications,  
7 principal forgiveness, principal reductions, doing rate  
8 reductions, doing forbearance. And the structure of this  
9 settlement is to reach out, to solicit in a meaningful way,  
10 this population who came in through the earliest phase of  
11 the program where everything wasn't verified up front, had  
12 to prove eligibility in a number of ways, and didn't get a  
13 mod decision or an approval from that process.

14 The structure of the settlement is that the invitation  
15 letter allows them to express interest and go through the  
16 process of qualifying under the programs that exist for them  
17 and for which they are eligible today or at the time of  
18 their application. So there's every reason to believe that  
19 they will, if eligible, be able to take advantage of all the  
20 subsequent efforts. And I think not a hearing has gone by  
21 where you haven't noted the pace of change in this area in  
22 almost all phases, including the consent decree with the  
23 primary regulator, the OCC, the prior Department of Justice  
24 consent order involving servicers. I think in a very real,  
25 significant, practical way this builds on those

1 accomplishments by providing, you know, the solicitation,  
2 the free counseling, and the like.

3 As to the counseling providers, Chase had a very direct  
4 hand in vetting and discussing and proposing these  
5 organizations. It has working, live partnerships with lots  
6 of different advocacy groups, as you probably no doubt also  
7 have read. In the spectrum of those who have gotten  
8 involved in counseling or putative counseling services, you  
9 have, you know, the HomeFree and La Raza at one end, and you  
10 have folks who are the subject of criminal activity,  
11 criminal indictments, on the other.

12 And so having organizations which could deliver on a  
13 nationwide settlement, had the platform to be able to do  
14 that, had to band with, within a relatively short period --  
15 because the idea is you have these letters go out, and then,  
16 within a three-month period, people take advantage of  
17 them -- had to band with to actually step up and service  
18 those who wanted to take advantage of the free counseling,  
19 was also significant.

20 And those two organizations have a proven track record,  
21 specifically around mortgage modification counseling, of  
22 knowing the programs, knowing HAMP, knowing the proprietary,  
23 the nonfederal government programs, and so we think are the  
24 best candidates to provide effective counseling for those  
25 who choose it.

1 I would also note that although La Raza would certainly  
2 be happy to provide counseling for Spanish-language speakers  
3 where needed, they also are very clear that they are ready,  
4 willing, and able to serve all borrowers, Spanish speaking  
5 or otherwise, in connection with the counseling services  
6 that may be required here.

7 Just getting down to the nitty-gritty of the Notice,  
8 the distinction that Mr. Klein was drawing in the form of  
9 notice, is the traditional stuffing in an envelope and  
10 mailing it, versus what's generally called a self-mailer.  
11 You've seen them probably every day in the mail. They are  
12 folded three times, six times, and have some adhesive, and  
13 you open them up that way.

14 The self-mailers tend to be a little bit cheaper, but,  
15 again, there are many, myself included, who think those are  
16 more likely to be actually opened, than something that is in  
17 an envelope and has some official-looking moniker on it and  
18 requires additional effort.

19 But we are -- what we need from you, and what's not as  
20 explicit in the Proposed Preliminary Approval Order, is that  
21 the self-mailer is an option called out in the Settlement  
22 Agreement, and unless you have an objection to that being on  
23 the table for consideration, we'd like you to approve that  
24 as an alternative means, as opposed to an envelope, and then  
25 the parties, in consultation with the settlement

1 administrator here, KCC -- which, by the way, is a very  
2 experienced national settlement administrator --

3 THE COURT: I know of them.

4 MR. AGOGLIA: -- and we'll make a final decision  
5 there.

6 In terms of timing, the minimums here are -- we have,  
7 you know, assuming you take it under advisement for a few  
8 days, the mailing will go out sometime mid January. Then we  
9 have what I think is the minimum sort of due process period  
10 of 60 days for borrowers to investigate, visit the  
11 settlement website, call counsel if they choose, read the  
12 papers, and decide whether to participate or to opt out or  
13 to participate and object.

14 That deadline would fall sometime mid March. And so  
15 the week of the 21st becomes something of, I think, the  
16 shortest period of time, if there are going to be  
17 objections. I wouldn't be surprised if Mr. Bennett shows up  
18 as an objector. That late April period, I think, is the  
19 minimum time period.

20 And if it's going to be the week of the 21st, that's  
21 fine, if that's where it is, but we'd ask that it not be the  
22 Monday, if possible, with your calendar, and set a little  
23 bit later in the week.

24 To answer a question I think Mr. Klein raised about  
25 Mr. Bennett. He was participating in the MDL. He was not,

1       however, as I understand it, designated as part of the lead  
2       counsel group. He thereafter asked to be remanded. The  
3       case was on behalf of a single-named plaintiff,  
4       Ms. Bordorlay [ph.]. It was remanded to Virginia, from  
5       which it came, after that Court had entered a dismissal of  
6       the core of their HAMP claims; and it was later settled,  
7       and, I would represent to the Court, settled primarily on  
8       the basis of other claims that were raised there.

9               So I don't know what Mr. Bennett is up to. I know what  
10       he says: He just got to the office today and saw this and  
11       asked for a continuance. I agree your denial is the  
12       appropriate course of action here. We'll see what comes of  
13       it.

14              That's all I have, unless you have questions for Chase.

15              THE COURT: No.

16              To extend the compliment to Mr. Klein, it gives me  
17       confidence to know that you are representing Chase, because  
18       I know that you were probably not the easiest adversary that  
19       Mr. Klein has ever dealt with --

20              (Laughter.)

21              THE COURT: -- but always held the position of the  
22       bank well. I think I made it clear in one of the earlier  
23       decisions in the case that while a lot of mistakes were made  
24       in the implementation of HAMP, they were not all Chase's  
25       fault. As the program, I think, was conceived in Treasury

1 and the way the regulations were developed, you could see a  
2 lot of opportunity for error that, in a way, the government  
3 may have inflicted on the banks, and I see nothing wrong  
4 with a bank or a business trying to do the right thing. And  
5 my initial impression is that that's what this settlement is  
6 trying to do.

7 I know that Chase will approach it with good faith,  
8 which is why I asked about the invitation letters and the  
9 foreclosure holds. I know there is a provision in the  
10 settlement that provides that anyone whose mortgage service  
11 is transferred to another servicer is excluded from the  
12 class. I know I can trust that does not mean that the "Son  
13 of MERS" is suddenly going to wake up and find 50,000 people  
14 transferred to some new entity that we are unfamiliar with.

15 What is interesting about the settlement, obviously, as  
16 you would expect -- this is a discussion that has gone on in  
17 my chambers with my law clerks, who have been involved in  
18 the case, and one of the exercises that we have had is  
19 trying to imagine what we would do if we were trying to  
20 settle the case as between the plaintiffs and Chase.

21 And I have to say what you have done is not too  
22 dissimilar from some of the ideas that we had, only yours  
23 look a little better, actually, in the sense that they are  
24 more fully thought out than some of what we thought might be  
25 an appropriate resolution of the case.



1           Again, I do not want to give the appearance to  
2           Mr. Bennett or to anyone else that I am prejudging what  
3           anyone may say by way of objection, because there may be  
4           things I have not thought of that I should consider. But,  
5           at first blush, I see no reason not to finish the review  
6           either by the end of this week or, more likely, early next  
7           week and proceed with the preliminary approval so that we  
8           can get the process started on what seems to me to be a good  
9           resolution of a very difficult litigation.

10           MR. AGOGLIA: Let me just call out that one  
11           provision which allows, for the first time in my experience  
12           in settling class actions over more than two decades, a  
13           class member to obtain the benefit of the settlement before  
14           there is final approval; that is, before Chase gets the  
15           benefit of the bargain itself, because until final approval  
16           and the settlement is effective through a judgment that's  
17           not subject to appeal, it gets no release. But as a matter  
18           of abundant good faith, if folks get the Notice and submit  
19           the required documentation to say, "I want you to put a hold  
20           on that," you know, the decision is, "Get them the relief,  
21           see if they're eligible, run you them through," rather than  
22           hold off, as you would in every other case, before  
23           administering the class benefit until you have the judgment  
24           in hand. So that, I think, is certainly an issue bargained  
25           for by their counsel but something Chase agreed to. And I

1 think it does market as unusual, and unusually beneficial,  
2 because it does confer on those who might be most  
3 vulnerable, if they have a notice of sale pending, the  
4 opportunity to take full advantage of this. And there are  
5 other advantages, which I'm sure we'll get into at the time  
6 of final approval.

7 But we appreciate your hearing us out today, and I know  
8 that we will be prepared to make sure that the  
9 administration of this goes exactly according to plan.

10 If it would be helpful to the Court, I'm sure we would  
11 be inclined to submit a revised preliminary approval order  
12 with dates put in there, if that would help. You just need  
13 to let us know if that would be helpful. If not, I think  
14 we've structured it where just the final fairness hearing  
15 date needs to be inserted, and the rest operate mechanically  
16 by an operation of the number of days from entry of that  
17 order.

18 THE COURT: If I think it helpful, I will ask for  
19 it. But now that I know that April 21st is the first real  
20 date for a final hearing, I think we can work our way into  
21 it. So I think that should be absolutely fine.

22 You know, when I said -- actually the provision you are  
23 pointing to, the foreclosure hold, when I say that I think  
24 you have improved on my ideas of how to settle a case, that  
25 is something I had not thought of. I think it is

1 imaginative, and, again, I like the idea of expediting  
2 relief for the class, again assuming that final approval is  
3 allowed.

4 Thank you, counsel, for what I know was a lot of work.

5 MR. AGOGLIA: Thank you, your Honor.

6 THE CLERK: All rise.

7 (Proceedings adjourned.)  
8

9 C E R T I F I C A T E

10 I, James P. Gibbons, Official Court Reporter for the  
11 United States District Court for the District of  
12 Massachusetts, do hereby certify that the foregoing pages  
13 are a true and accurate transcription of my shorthand notes  
14 taken in the aforementioned matter to the best of my skill  
15 and ability.

16 /s/James P. Gibbons January 6, 2014

17 \_\_\_\_\_  
James P. Gibbons  
18

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